

84-214

(2)

Office Supreme Court, U.S.
Office Supreme Court, U.S.
JUN 23 1984
ALEXANDER L. STEVAS,
CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
_____ TERM, 1984

ANTHONY RUGGIERO,

Petitioner

VS.

TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,
LOCAL NO. 773, and SILVER LINE, INC.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
APPENDIX

Ronold J. Karasek, Esquire
Zito, Martino and Karasek
641 Market Street
Bangor, Pennsylvania 18013
(215) 588-0224
Counsel for Petitioner

6688



APPENDIX "A"

App. 1.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

April 30, 1984

TO: Ronold J. Karasek, Esquire

Daniel E. Cohen, Esquire*
Seidel and Cohen

Andrew L. Markowitz, Esquire*
Stephen C. Richman, Esquire
Markowitz & Richman

NOTICE OF JUDGMENT

This Court's memorandum opinion was filed
and Judgment was entered today in Case No.
83-1703 and copies are enclosed herewith.

PETITION FOR REHEARING (FRAP 40)

Your attention is specifically directed to
Chapter VIII B of the Court's Internal Operating
Procedures.

B. Rehearing In Banc.

Rehearing in banc is not favored and ordin-
arily will not be ordered except

(1) where consideration by the full
court is necessary to secure or maintain uniformity
of its decisions, or

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(2) where the proceeding involves a question of exceptional importance.

This Court does not ordinarily grant rehearing in banc where the panel's statement of the law is correct and the controverted issue is solely the application of the law to the circumstances of the case.

When a petition for rehearing has been filed by a party as provided by FRAP 35(b) or 40(a), unless the petition for panel rehearing under 40(a) states explicitly it does not request in banc hearing under 25(b), it is presumed that such petition requests both panel rehearing and rehearing in banc.

ml

*See Bill of Costs form attached.

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-1703

RUGGIERO, JR., ANTHONY,

Appellant

vs.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA, LOCAL NO. 773 and SILVER LINE, INC.

Appeal from the United States District Court for
the Eastern District of Pennsylvania (D.C. Civil
No. 80-1932) District Judge: Honorable E. Mac
Troutman

Submitted Under Third Circuit Rule 12(6)
April 27, 1984

Before: ALDISERT, WEIS, and ROSENN, Circuit Judges

(Filed April 30, 1984)

MEMORANDUM OPINION OF THE COURT

ALDISERT, Circuit Judge.

This appeal presents two questions for

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decision: did the district court err in granting summary judgment in favor of both the union and the employer; and did it err in refusing to impose sanctions against the union for filing the summary judgment motion in an untimely and dilatory manner. We find no error and affirm.

Anthony Ruggiero, Jr., appeals from an adverse summary judgment. Ruggiero, a former employee of Silver Line, Inc., and a member of Teamsters Local 773, filed a complaint alleging that Silver Line breached its collective bargaining agreement with the union by discharging the appellant. He further alleged that the union breached its duty of fair representation by its failure to process his claims against the company to arbitration. After answers were filed and discovery completed, the union filed a motion for summary judgment. The district court granted the motion on the ground that the appellant had failed to exhaust his internal union remedies. Later, Silver Line filed a motion for summary judgment. This was unopposed by appellant, who

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did so "without prejudice to his rights to contest on further appeal the court's earlier granting of the summary judgment in favor of the union." App. at 78. The district court entered the order granted summary judgment in favor of the company. This appeal followed.

For 13 years appellant was employed by Silver Line as a truckdriver. In December 1976 he was assigned to follow a certain delivery route and refused, contending that it was unfamiliar to him. He was discharged. Several days later the union business agent, Anthony Molinaro, tried to arrange for a meeting to be held with the company to discuss the company's refusal to permit Ruggiero to return to work. The company's general manager refused.

The first step in the grievance procedure contained in the collective bargaining agreement provided:

All grievances must be made known in writing to the other party within five (5) working days after the reason for such grievance has occurred.

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App. at 17. It is contested whether Ruggiero ever filed a grievance, but in the view we take this contested fact is immaterial because of subsequent events.

Molinaro received a letter from appellant's counsel requesting the grievance procedure be followed. Molinary then telephoned the company and asked if it would reconsider its position. The company refused. Molinaro then scheduled another meeting. He also arranged for an impartial mediator from the Federal Mediation and Conciliation Service (FMCS) to attend. Appellant, however, appeared at the meeting with a stenographer and insisted that the stenographer be permitted to transcribe the proceeding. When he was told that the stenographer would not be permitted and that it was intended to be an informal meeting, appellant refused to participate and the meeting was cancelled. Under the constitution of the international union, appellant had the right to file an appeal or charge with the Secretary/Treasurer of the Joint Council. He failed to follow this procedure. He had a right to appeal

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to do so. He had the right to appeal to the Constitutional Convention. He failed to do so. Indeed, even though represented by counsel, appellant did not attempt to initiate the first step of the internal union remedies available to him in allowing the appellate bodies of the international union to consider his claim that his local union had breached its duty to represent him fairly. The availability of these procedures and the appellant's failure to utilize them cannot be controverted.

The general rule is that before a member of any union may maintain an action against his union for breach of the duty of fair representation, the member must first exhaust all available internal union remedies. Clayton v. United Automobile Workers, 451 U.S. 679 (1981); Brady v. Trans World Airlines, Inc., 401 F.2d 87 (3d Cir. 1968), cert. denied, 393 U.S. 1048, rehearing denied, 394 U.S. 955 (1969); Gainey v. Brotherhood of Railway and Steamship Clerks, 275 F.2d 342 (3d Cir.), cert. denied, 363 U.S. 811 (1960).

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In Clayton the Court set forth three exceptions to the general rule requiring exhaustion:

[F]irst, [where] union officials are so hostile to the employee that he could not hope to obtain a fair hearing on his claim; second, [where] the internal union appeals procedure would be inadequate...to award him the full relief he seeks under Section 301; and third, [where] exhaustion of internal procedures would unreasonably delay the employee's opportunity to obtain a judicial hearing on the merits of his claim.

451 U.S. at 689.

Moreover, there is a factual element in the present case which differs from Clayton in one important respect. Whereas the plaintiff in Clayton was seeking reinstatement to his former job, an examination of the complaint in the case before us now demonstrates that appellant did not request such relief here. He requested money damages and reinstatement of his union membership, but nowhere does he request reinstatement to employment with Silver Line.

Constitutional provisions for internal union relief are set forth in the union's brief.

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Brief for Appellee Teamsters, etc, at 14-15. We are satisfied that the district court did not err in granting summary judgment in favor of the union on the ground that appellant did not exhaust his internal union remedies.

Whether sanctions should be imposed on the timeliness of filing a motion for summary judgment is a matter left to the discretion of the district court. We find no abuse here.

We have carefully considered all of the contentions of appellant.

Accordingly, the judgment of the district court will be affirmed in all respects.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Aldisert
Circuit Judge

APPENDIX "B"

APP. 10.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-1703

RUGGIERO, JR., ANTHONY,

Appellant

vs.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA, LOCAL NO. 773 and
SILVER LINE, INC.,

(E.D. Pa. Civ. No. 80-1932)

Present: ALDISERT, WEIS and ROSENN, Circuit Judges.

O R D E R

The Petition for panel rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court, and no judge who concurred in the decision having asked for rehearing, the petition for rehearing before the original panel is denied.

BY THE COURT:

/s/ Aldisert

DATED: May 17, 1984

APPENDIX "C"

App. 11.

ANTHONY RUGGIERO, JR. : Civil Action

VS. :

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN:

AMD HELPERS OF AMERICA, LOCAL NO.

773 and SILVER LINE, INC. : No. 80-1932

PRETRIAL REPORT

TRIAL COUNSEL: Pf. Ronold J. Karasek

Df. Stephen C. Richman-Union

Df. Daniel E. Cohen-Silver Line, Inc.

PRETRIAL CONFERENCE HELD ON MAY 5, 1981

1. Summary: Federal question - Section 301
Labor-Management Relations Act action.

Plaintiff, while a driver for Silver Line, Inc., was laid off on December 17, 1976, as a result of not making certain deliveries although he was advised by both Union and employer officials and authorized agents not to make such deliveries.

Plaintiff filed a grievance and attempted to exhaust his internal union remedies but alleges that such exhaustion would be ineffective.

Defendant alleges that Plaintiff was properly discharged and has failed to exhaust internal collective bargaining remedies. Also, the instant

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charges were the subject of unfair labor practice charges filed with the National Labor Relations Board which were dismissed as lacking in merit.

2. Discovery is incomplete.

3. All remaining discovery is to be completed by August 1, 1981.

4. Summary judgment motions are contemplated.

5. No unusual legal issues, but whether or not plaintiff has exhausted internal union remedies and arbitration remedies.

6. Pretrial memos have been filed.

7. Settlement: Unlikely at this time.

8. Total trial time: 2 days.

9. List for trial after September 1, 1981.

(signed) Richard A. Powers
Richard A. Powers, III
United States Magistrate

APPENDIX "D"

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IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION-EQUITY

Anthony Ruggiero,	:
Plaintiff	: No. 28 May Term 1978
v.	:
Teamsters Local No.	:
773 et al.,	:
Defendants	: In Equity

COMPLAINT

AND NOW this 1st day of May 1980 comes the Plaintiff above named by and through his attorneys, Zito, Martino and Karasek, by Ronold J. Karasek, Esquire and prays to this Honorable Court for judgment upon a cause of action whereof the following is a statement, to wit:

1.The Plaintiff, Anthony Ruggiero, Jr., is an adult individual residing on McKinley Avenue, Roseto, Northampton County, Pennsylvania.

2.The Defendant, the Local 773 of the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, is a labor union with an

office located at 1345 Hamilton Street, Allentown, Lehigh County, Pennsylvania.

3.The Defendant, Silver Line, Inc., is a business corporation doing business in Pennsylvania with an office located at the Penn-Cann Interchange, Wind Gap, Northampton County, Pennsylvania.

COUNT I

Ruggiero v. Teamsters

4. (Incorporation Clause)

5.From 1956 to December 16, 1976, the Plaintiff was employed by Silver Line, Inc., as a truck driver, wherein various textile materials were delivered by the Plaintiff to various factories in the Slate Belt area.

6. For the period of time aforementioned in the preceding paragraph, the union at such place of employment was the Teamsters, Local No. 773. to which the Plaintiff paid his dues and was a member in good standing.

7. As a result of such union membership, the Plaintiff respectfully avers that there existed a trust relationship between Local 773 and its members in that said union was a Trustee of the rights of

its members of the bargaining unit and therefore, had a duty and obligation to protect such rights to the best of its ability. Conversely, the members of such bargaining unit became beneficiaries of such obligation and duty owed to them by the union.

8. On or about December 17, 1976, the Plaintiff was wrongfully laid off from his job at Silver Line, Inc. This occurred as a result of his not making certain deliveries although he was advised by both the union and employer officials and authorized agents not to make such deliveries.

9. Immediately upon such layoff, the Plaintiff attempted to settle such grievance within the internal organization of the union and pursuant to the grievance procedure of Teamsters Local 773.

10. The internal organization and grievance procedure of the Teamsters Local 773 conforms with Article XII Section 1 and 2 of the collective bargaining agreement between Silver Line, Inc. and Local No. 773 of the Teamsters effective May 15, 1977 and ending May 14, 1980. A copy of such Article is attached hereto and Marked Exhibit "A".

11. The Plaintiff followed the internal procedures

in that:

(a) the day of the incident, he immediately telephoned the Business Agent of the union, Anthony Molinaro, and had a conference telephone conversation with the agent, himself, and the foremen, Kenneth Huber, of the employer. Thereupon, he was advised to return home and report the following day for work.

(b) the following day, the Plaintiff reported for work and discovered his time card was pulled out. He telephoned the foremen the following day and was advised by the foreman that he was "laid off" because of lack of work and to file for unemployment compensation benefits which were, in fact, paid.

(c) thereupon, the Plaintiff filed a grievance within the applicable time limits and in writing and brought the matter to the attention of the shop steward, Raymond Kegelitz. Mr. Kegelitz advised a meeting would be scheduled between the foremen, himself, the Plaintiff and the Business Agent.

(d) thereupon, a meeting was held pursuant to Step One of the grievance procedures heretofore described. The Plaintiff was asked to leave the meeting

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while the Business agent and the foreman discussed the matter. Thereupon, the Business Agent advised he would be in touch with the Plaintiff in a "few days". There was never a written disposition of this meeting within five (5) working days as required by Step One.

(e) thereupon, not hearing from either the union or the employer, the Plaintiff telephoned the union President who transferred the call to the Business Agent and the Agent advised, "I told you before, I'll contact you."

(f) that not being a satisfactory adjustment of the matter, the Plaintiff requested the grievance to be submitted to Step Two of the grievance procedure. This was never done although repeatedly requested to do so even by the attorney for the Plaintiff who requested same by letter of November 14, 1977, a copy of which is attached hereto as Exhibit "B". Such request was reiterated by letter of December 19, 1977, a copy of which is attached hereto as Exhibit "C".

(g) in the interim, from January 1977 to November 1977, the Plaintiff telephoned the employer and was advised there was still no work for the

Plaintiff. However, the employer hired new drivers with little or less seniority than the Plaintiff. Such is in contravention of Article X, subscetions a,b,and e of the collective bargaining agreement. A copy of such article is attached as Exhibit "D".

(h) after much negotiation by Plaintiff's counsel, an arbitration hearing was scheduled for December 19, 1978, before Donald S. Blake, Commissioner of the Federal Mediation and Conciliation Service in Allentown. Such Commissioner was selected by the union.

(i) at the time of the arbitration hearing, the union and the employer would not proceed with same since the Plaintiff had brought a stenographer for which the Plaintiff would pay in order to make an adequate record of same. In fact, the Business Agent of the union became foul and abusive toward the Plaintiff and his counsel and stated the Plaintiff should take him to court.

(j) prior to the arbitration, the Commissioner advised he was apprised of the entire situation by the union's Business Agent. Later, the Commissioner advised the Plaintiff he was merely a "mediator"

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and had no authority to enter into binding arbitration or be subpoenaed to testify if the Plaintiff would wish to proceed further with his instant lawsuit.

(k) The Commissioner, although requested to do so by Plaintiff's counsel, refused to reschedule the arbitration on the grounds heretofore alleged in subparagraph (j).

12. The Plaintiff respectfully avers he has attempted to exhaust his internal union remedies, and has, in fact, done so, or, in the alternative, such exhaustion would be ineffective as a result of either/or

(a) the exhaustion cannot yield proper remedies

(b) the union officials have, by their own

actions, precluded a fair effective trial or appeal,

(c) the exhaustion is unreasonably burdensome

(d) the exhaustion would lead to irreparable

injuries.

13. The Plaintiff respectfully avers that the Defendant has breached its trust, duty and fiduciary obligation owed to its members, as representative of the members of the bargaining unit and did not act in good faith, but acted unreasonably, arbitrarily

and fraudulently in that:

(a) the Plaintiff had paid his dues to the Teamsters Local 773 up until the time he was laid off and was a member in good standing and of long standing.

(b) the union did not act in good faith and in a reasonable manner when its authorized agents, shop steward, so on, failed to submit the grievance to Step Two and to arbitration as required by Article XI and XII of said collective bargaining agreement as requested by both the Plaintiff and his counsel. A copy of Article XI, Section 1, is attached as Exhibit "E".

(c) by failing to follow a complete and fair investigation of both sides of the dispute in this matter, and failing to decide the matter on the merits of the controversy.

(d) after said Plaintiff was laid off, the union permitted the employer to hire new or other employees whose length of service and seniority were less than the Plaintiff's in contravention of said collective bargaining agreement.

(e) by allowing the employee to be laid off

which, in effect, became a discharge in contravention of Article XIII, Sections 1 and 2 of said collective bargaining agreement. A copy of Article XIII is attached hereto as Exhibit "F". In fact, the Plaintiff collected unemployment benefits and was then told he "voluntarily quit".

(f) by failing to properly and promptly advise the Plaintiff of the nature of the dispute and its resolution, if any.

(g) by scheduling an arbitration hearing before a Commissioner of its own choosing, and failing to proceed with the arbitration because of the fact that a record would be made.

(h) by scheduling an arbitration hearing before a Commissioner who could only act as a "mediator" and not advising the Plaintiff or counsel thereof.

(i) by discussing the matter with the Commissioner prior to the hearing thereby biasing the Commissioner and preventing a fair and impartial hearing.

14. Further, the Plaintiff respectfully avers that this Court has jurisdiction to hear this matter in that it is not federally pre-empted by the NLRA since

the activity complained of is not arguably within Section 7 or Section 8 of the NLRA since the NLRB has failed to issue Complaints on separate charges filed by the Plaintiff to Case Nos, 4-CA-9259,7892 and 4-CB-3394,3641.

15. Further, the Plaintiff respectfully avers that this Court has jurisdiction to hear this matter since it claims injury to the union/member relationship.

16. As a direct, proximate or substantial result of said breach of fiduciary duty owed by said union to the Plaintiff, the Plaintiff suffered severe and irreparable damage including:

(a) destruction of his rights and privileges in the Defendant union and losing his right of reinstatement.

(b) grievous physical and mental pain, suffering, humiliation, worry and degradation.

(c) consequential damages, collateral hereto, in loss of employment, lost wages, lost benefits, so on.

WHEREFORE, the Plaintiff respectfully prays this Honorable Court for judgment in his favor and against the Defendant as follows:

(a) restoration of Plaintiff's rights and privileges in the Defendant union and reinstatement of the Plaintiff as member in good standing thereof.

(b) damages as a result of the illegal and unlawful conduct as hereinabove set forth including damages for grievous physical and mental pain and suffering, humiliation, worry and degradation.

(c) consequential damages as the Court may deem just and appropriate.

(d) any other relief the Court may deem just and appropriate under the circumstances.

COUNT II

Ruggiero

v.

Teamsters

17. (Incorporation clause)

18. In spite of the Plaintiff's constant efforts to resolve the matter with the union Local 773, such union has repeatedly refused to protect the rights and interest of the Plaintiff in this matter, even though said union has a fiduciary obligation to protect the members of the bargaining unit in this matter.

19 The Plaintiff avers that the conduct as hereinabove alleged of the Defendant union Local 773 is

willful, malicious, knowing and wrongful and has failed to protect said interest of the Plaintiff in this matter.

WHEREFORE, the Plaintiff respectfully prays this Honorable Court to award the Plaintiff punitive damages in an amount your Honorable Court deems necessary and appropriate in this matter.

COUNT III

Ruggiero v. Silver Line. Inc.

20. (Incorporation clause)

21. The defendant, Silver Line, Inc., failed to comply with the terms and conditions of the collective bargaining agreement as hereto alleged as a result of the union's failure to properly represent the Plaintiff.

22. The Defendant, Silver Line, Inc. agreed to the action of the Defendant. Local 773, and the failure of the union to properly represent the Plaintiff.

23. As a result, the employer and the union acted in concert to deprive the Plaintiff of his proper rights of representation by the union and the employer is jointly or severally liable with the Defendant union.

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WHEREFORE, the Plaintiff respectfully prays this Honorable Court to award the Plaintiff damages in an amount your Honorable Court deems necessary and appropriate in this matter.

Respectfully submitted,

ZITO, MARTINO and KARASEK

by: s/Ronold J. Karasek, Esquire

Attorney for the Plaintiff

State of Pennsylvania: SS
County of Northampton:

Before me a Notary Public in and for the County and State aforesaid personally appeared Anthony Ruggiero, Jr. who being duly sworn according to law deposes and says that the statements and allegations as contained in the within Complaint are true and correct to the best of his knowledge, information and belief,

s/ Anthony Ruggiero, Jr.

s/ Diana E. Miller, Notary Public

SECTION 1. Grievance Procedure

All grievances or disputes involving any controversy, complaint, dispute, or misunderstanding arising as to the meaning, application or observance of any provisions of this Agreement, shall be handled to the manner hereinafter set forth. It is agreed that all matters pertaining to the interpretation of this Agreement must be referred directly to the Negotiation Committee, provided that if a grievance has not been filed, the matter shall not be the subject of arbitration until a grievance is filed.

Step 1: All grievances must be made in writing to the other party within five (5) working days after the reason for such grievance has occurred. The aggrieved employee's or employees' shop steward or another authorized representative of the Union shall first submit a written grievance to the foreman in charge, or his duly authorized representative. The shop steward or another authorized representative of the Union of the employee or employees involved shall be present

at any meeting between the foreman and such employee or employees. The foreman in charge, or his duly authorized representative, must make a written disposition of the matter within five (5) working days after the submission of such written grievance thereto.

Step 2. If the disposition of the matter by the foreman in charge or his duly authorized representative is not satisfactory, the matter must be taken up by the Business Agent and the Employer's terminal manager, or other representative of the Employer with authority to act, within five (5) working days of the written disposition set forth in Step 1. The terminal manager or other representative of the Employer must make a written disposition of the matter within five (5) working days after the day the matter is taken up with him by the Business Agent.

SECTION 2. ARBITRATION:

If any grievance or dispute cannot be satisfactorily settled, then the grievance shall be

submitted to an impartial arbitrator, if the parties cannot agree upon the selection of an impartial arbitrator, then such selection shall be referred to the Federal Mediation and Conciliation Service no later than the next day. After the Federal Mediation and Conciliation Service submits a list of arbitrators, the Union and the Company each shall reply with their preferred selections, no later than three (3) days after receipt of such list. This cost of the arbitration shall be shared equally by the parties. The decision of the arbitrator shall be final and binding on the parties involved.

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CORRESPONDENCE FROM ZITO, MARTINO AND KARASEK

November 14, 1977

Teamsters, Chauffeurs,	Silver Line, Inc.
Warehousemen and Helpers	Penn-Can Interchange
Local Union No. 773	R. D. # 1
1345 Hamilton Street	Wind Gap, Pennsylvania
Allentown, Pennsylvania	

Re: Anthony Ruggiero, Jr. - employee

Gentlemen:

Please be advised that this office has been retained by Mr. Anthony Ruggiero of McKinley Street, Roseto, Northampton County, Pennsylvania, concerning his lay-off from his position at Silver Line, Inc., trucking company, Penn-Can Interchange, Wind Gap, Pennsylvania.

This office has reviewed the facts and circumstances surrounding the lay-off of Mr. Ruggiero, and it appears that this lay-off was, indeed, improper. Mr. Ruggiero advised the appropriate union representative of this grievance, and it appears that none of the grievance procedures in the Collective Bargaining Agreement entered into have been complied with.

Therefore, this letter is just to again place both of you on formal notice of my client's

EXHIBIT "B"

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grievance, and to have the grievance procedure followed, as outlined in the Collective Bargaining Agreement entered into between the Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 773, and Silver Line, Inc. If this matter is not taken up properly, this office will have no alternative but to file the appropriate legal actions to protect our client's interest in this regard.

Thank you for your cooperation in this matter.
Awaiting your response, I remain,

Very truly yours,

ZITO, MARTINO and KARASEK

Ronold J. Karasek, Esquire

RJK:kao

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CORRESPONDENCE FROM ZITO, MARTINO AND KARASEK

December 19, 1977

Mr. Anthony Molinaro
Teamsters, Chauffeurs, Warehousemen & Helpers
Local Union No. 773
1345 Hamilton Street
Allentown, Pennsylvania

Re: Mr. Anthony Ruggiero

Dear Mr. Molinaro:

As a sequel to our telephone conversation in the above matter on Friday, December 9, 1977, I contacted my client to review your position with him.

My client indicated to me that an original grievance was filed with both your office and the office of Silver Line, Inc. The grievance that was filed was exactly the same as the ones heretofore filed with you, and I suggest you review them thoroughly.

From my conversations with my client, it appears that he had taken the Allentown run in the past, but that he was unfamiliar with the stops on that particular run and so advised his employer and the union. He was told that he would

EXHIBIT "C"

not have to take the Allentown run any longer as a result of his unfamiliarity with the route. In any event, on the night in question, he was again asked to take the Allentown route, contrary to these earlier agreements and his understanding.

On the night in question, after he was requested to take the run, he again brought up the fact of the prior understandings and conversations to both you, and the employer, and he was told to go home and not to worry about it. The very next day, when he again returned for work, he discovered that his time card had been pulled and that he was without a job. My client had never been given any indication that this was going to be the result of the conversations the night before when he was told to "go home and not worry about it."

Clearly, these actions indicate that my client's rights have been severely prejudiced in this matter, and I again request you to follow the grievance procedure as outlined in the Collective Bargaining Agreement entered into between your union and the employer. If not, it

App.33

will be upon this office to file all necessary
and proper lawsuits to protect my client's
interests in this regard.

Thank you for your cooperation in this matter.

Very truly yours,

ZITO, MARTINO AND KARASEK

Ronold J. Karasek, Esquire

RJK:kao

ARTICLE X.

SECTION 1. SENIORITY:

(a) Seniority, as measured by length of continuous service with the Employer, shall prevail at all times. The application of seniority shall be determined by mutual agreement between the Employer and the Local Union.

(e) When it becomes necessary to reduce the work force, the last employee on the seniority list shall be laid off first, and when the force is again increased, the employees are to be returned to work in the reverse order in which they were laid off, providing they still maintain seniority as described herein. And further providing the employees retained at the time of layoff, or the employees recalled at the time of recall from layoff, must be qualified to perform the work required.

ARTICLE XI.

SECTION 1. STEWARDS: APPOINTMENTS AND DUTIES

The Employer recognizes the right of the Union to designate job stewards for each termination from the Employer's seniority list. The authority of job stewards so designated by the Union shall be limited to and shall not exceed the following duties and activities:

(a) The investigation and presentation of grievances to his Employer or the designated Company representative in accordance with the provisions of the Collective Bargaining Agreement.

ARTICLE XIII.

DISCIPLINARY PROCEDURE

SECTION 1. DISCHARGE OR SUSPENSION

The Employer shall not discharge nor suspend any regular employee without just cause. In all cases involving the discharge or suspension of an employee the Company must immediately notify the employee in writing of his discharge or suspension and the reason thereof. Such written notice shall also be given to the shop steward and a copy mailed to the Local Union office, within one (1) twenty-four (24) hour period from the time of the discharge or suspension provided, however, that the failure of the Employers to so notify the shop steward or to mail such notice to the Local Union within one (1) twenty-four (24) hour period will have no effect upon the merits of the discharge or suspension.

SECTION 2. WARNING NOTICE:

In respect to discharge, the Employer shall give at least one (1) warning notice against such employee to the employee, in writing, a copy of

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same to be sent to the Local Union affected, except that no warning notice need be given to any employee before he is discharged if the causes of such discharge are for the following proved causes: dishonesty, drinking while on duty, or the carrying of unauthorized passengers. The warning notice as herein provided shall not remain in effect for a period of more than nine (9) months from the date of the occurrence upon which the complaint and warning notice are based.

APPENDIX "E"

App. 38.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY RUGGIERO, JR., : Civil Action No.

Plaintiff : 80-1932

vs. :

TEAMSTERS, et al., :

Defendants :

PLAINTIFF'S AFFIDAVIT CONTRA TO DEFENDANT'S
(UNION) MOTION FOR SUMMARY JUDGMENT

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF NORTHAMPTON)

The undersigned, Anthony Ruggiero, Jr., the
Plaintiff, being duly sworn according to law,
deposes and says as follows:

1. For approximately 13 years, I was employed
by Silver Line, Inc., and a member of the Inter-
national Brotherhood of Teamsters, Chauffeurs, Ware-
housemen and Helpers of America, Local Union No.
773.

2. The only internal union procedure of
which I was aware were as found in the collective
bargaining agreement between the Co-Defendants,

copies of which have been heretofore attached to Plaintiff's pleadings.

3. At no time prior to (or after institution of) suit, did the said Anthony Molinaro, Sr., as Business Agent for Local No. 773, or any other union personnel advise me, or my counsel, of the procedures outlined in Molinaro's affidavit in Support of Summary Judgment.

4. During the course of pre-suit "representation" by the Union, the said Anthony Molinaro, Sr. led the Plaintiff and his counsel to believe an arbitration hearing was scheduled in lieu of proceeding with the lawsuit that had already been filed when, in fact, it was merely mediation and would not proceed with the hearing since a stenographer was present. A copy of a memorandum transcript filed in the instant action at the state level is attached hereto and marked Exhibit "A" and is hereby made a part hereof.

5. At the time of the aforesaid hearing, the Mediator made clear to the Plaintiff that he had already been informed of the facts of the case

and felt the Plaintiff was wrong. When questioned by Plaintiff's counsel as to his impartiality, the Mediator advised he had spoken with Mr. Molinaro and was advised by Molinaro that he could never be subpoenaed if the matter went to Court so we could never his impartiality!

6. A fortiori, the conduct of the said Anthony Molinaro, Sr., and his failure to advise and assist the Plaintiff in processing any claim at the international level bespeaks of bad faith and improper representation.

7. I made this affidavit from my own personal knowledge, and swear that I would be competent to testify to the above matters in a Court of Law.

/s/ Anthony Ruggiero, Jr.
Anthony Ruggiero, Jr.

Sworn to and subscribed before me
this 11th day of August, 1982.

/s/ Lynette Bierman
Lynette Bierman, Notary Public
Bangor, Northampton County, PA.
My Commission Expires November 12, 1985.

App. 41.

FEDERAL MEDIATION AND CONCILIATION SERVICE

RE: RUGGIERO V. TEAMSTERS,)
CHAUFFEURS, WAREHOUSEMEN) No. 28 May Term
& HELPERS, ET AL.) 1978

Proceedings, Tuesday, December 19, 1978, at
1:00 o'clock, p.m., at the Service Office, Suite
123, 1503 Cedar Crest Boulevard, Allentown,
Pennsylvania

APPEARANCES:

Ronold J. Karasek, Esq., for the Appellant
ANTHONY MOLINARO, for the Union

Proceedings reported by William J. Kocher,
Registered Professional Reporter.

MR. KARASEK: Let the record show that an
arbitration hearing was to be held today, the
19th day of December, 1978, before the Federal
Mediation and Conciliation Service, by Donald S.
Blake, Commissioner, at 1503 Cedar Crest Boulevard,
Suite 123, Allentown, Pennsylvania, pursuant to
various contract provisions between the Teamsters

EXHIBIT "A"

Union and Silver Line, Inc., and the employees, pursuant to a collective bargaining agreement that they had entered into. A lawsuit was filed with the Court of Common Pleas of Northampton County to the above number and term against the employer for a wrongful discharge and against the union for breach of their representation.

After that action was filed, it was agreed between the Teamsters Union, the employer, and the attorney for the employee, that this arbitration hearing would be held, so that the matter could be finally resolved. Today an arbitration hearing was scheduled, wherein I requested a court stenographer, Mr. William Kocher, of the Court of Common Pleas of Northampton County, to attend, so that a record could be made, in the event any appeal would be wished to be taken from this hearing, pursuant to the usual and customary rules for appealing these decisions in arbitration hearings.

Thereupon, Mr. Anthony Molinaro, the Business Agent for the Teamsters Union, when he recognized

App. 43.

the fact that a court stenographer would be transcribing the notes and various facts and other statements during the hearing, objected to the procedure and stated that he would not consent to the arbitration and that Mr. Ruggiero should file any and all necessary lawsuits and other matters to protect his interest.

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me upon the hearing held December 19, 1978, and that this copy is a correct transcript of the same.

DATED: December 26, 1978

(Signed) William J. Kocher
William J. Kocher
Official Stenographer
Court of Common Pleas
of Northampton County

APPENDIX "F"

App. 44.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY RUGGIERO, JR.,	:	Civil Action
	:	No. 80-1932
Plaintiff	:	
	:	
vs.	:	
	:	
TEAMSTERS, CHAUFFEURS, WARE-	:	
HOUSEMEN AND HELPERS OF	:	
AMERICA, LOCAL NO. 773 and	:	
SILVER LINE., INC.,	:	
	:	
Defendants	:	

AFFIDAVIT OF RONOLD J. KARASEK, ESQUIRE
CONTRA TO DEFENDANT'S (UNION) MOTION FOR
SUMMARY JUDGMENT

COMMONWEALTH OF PENNSYLVANIA)	
)	SS:
COUNTY OF NORTHAMPTON)	

The undersigned, Ronold J. Karasek, Esquire,
as attorney for the Plaintiff, being duly sworn
according to law, deposes and says as follows:

1. A copy of the docket entries attached
as Exhibit "A" in the above matter (prior to the
removal from state court) verified the date of
institution of the suit was August 8, 1978, and
not May 20, 1980, as argued in Defendant's Brief.

2. During pendency of the suit, the Union led Plaintiff's counsel to believe that in the interest of settlement it was attempting to process the Plaintiff's grievance. See copies of correspondence attached hereto and marked Exhibits "B" and "C".

3. Plaintiff and his counsel were led to believe an arbitration hearing was scheduled as evidenced by correspondence attached hereto and marked Exhibits "D", "E", "F" and "G".

4. At no time during the period of the aforesaid correspondence, September through December of 1978, did anyone from the union or the Mediator's office advise that the hearing was to be "mediation" as opposed to "arbitration" although the aforesaid correspondence clearly stated "arbitration".

5. Only after the meeting took place, did the Commissioner advise as to the exact nature and conduct of the meeting. See copy of correspondence attached hereto and marked Exhibit "H".

6. Depositions of a one Gilbert Overpeck

App. 46.

evidences that although Mr. Overpeck, on the same evening, also refused to take the specific run for which the Plaintiff was discharged, Mr. Overpeck was only laid off and later rehired.

7. I made this affidavit from my own personal knowledge on matters that occurred during my representation of the Plaintiff and I would be competent to testify to the above matters in a Court of Law.

/s/ Ronold J. Karasek
Ronold J. Karasek, Esquire
I.D. No. 23233

Sworn to and subscribed before
me this 11th day of August, 1982.

/s/ Lynette Bierman
Lynette Bierman, Notary Public
Bangor, Northampton County, Pa.
My Commission Expires November 12, 1985.

MAY TERM 1978

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R. KARASEK ANTHONY RUGGIERO, JR.
23233

PRECIPE FOR WRIT OF SUMMONS
: IN EQUITY

: AUGUST 8, 1978 EXIT

: RETURNED 8/9/78 BY SHERIFF

✓: SERVED 8/14/78

VCS

28 VS.

33.90

TEAMSTERS, CHAUFFEURS
WAREHOUSEMAN AND HELPERS OF
AMERICA, LOCAL 773

AND

SILVER LINE INC.

App. 47.

12.50 PD AUGUST 8, 1978 PRECIPE FILED.

9th FEBRUARY 22, 1979 PROCEEDINGS FILED.

MAY 2, 1980 COMPLAINT FILED BY R. KARASEK, ESQ. EO DIE EXIT. SERVED
MAY 6, 1980 SILVER LINE, INC.; SERVED MAY 8, 1980 TEAMSTERS, CHAUFFEURS,
WAREHOUSEMAN AND HELPERS OF AMERICA, LOCAL 773.

JUNE 6, 1980 PLAINTIFF'S ANSWER TO DEFENDANTS' PETITION FOR
REMOVAL FILED BY RONOLD J. KARASEK, ESQ.

Exhibit "A"

App. 48.

CORRESPONDENCE FROM ZITO, MARTINO AND KARASEK

August 15, 1978

Mr. Anthony Mollinaro

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS
1345 Hamilton Street
Allentown, Pennsylvania

Re: Anthony Ruggiero, Jr., v. Silver Line, Inc.
et al, Pasquale N. Leraris v. Silver Line,
Inc.

Dear Mr. Mollinaro:

This will confirm our telephone conversation of Monday, August 14, 1978, concerning the two (2) above captioned matters in which our respective officers are involved.

Concerning the Leraris matter, you stated to me that it appears that a settlement has been reached between your union and the employer where Mr. Leraris would be reinstated at his position at Silver Line, Inc., provided that he follows the conditions we discussed at the meeting that was held at your office in Allentown on Wednesday, July 26, 1978. In addition, you

EXHIBIT "B"

App. 49.

advised me that you will be contacting me within the near future as to when Mr. Leraris will be allowed to begin work once again; and, in the interim, I will draft a letter to him concerning this reinstatement and terms hereof.

Concerning the Anthony Ruggiero matter, you advised me that you were served with the Writ in Equity which I had filed on behalf of my client concerning that particular labor matter and, again, in the interest of settling that dispute, you will contact me as to a date, time and place when we can have a meeting and/or hearing at your office to further discuss this matter.

Thanking you for your cooperation in these matters, I remain,

Very truly yours,

ZITO, MARTINO and KARASEK

Ronold J. Karasek, Esquirr

RJK:kao

App. 50.

CORRESPONDENCE FROM ZITO, MARTINO AND KARASEK

August 23, 1978

Mr. Antony Mollinaro
Teamsters, Chaufferus, Warehousemen
and Helpers
1345 Hamilton Street
Allentown, Pennsylvania

Re: Anthony Ruggiero, Jr., v. Silver Line, Inc.,
et al.

Dear Mr. Mollinaro:

As a sequel to our telephone conversation in the above matter of Monday, August 14, 1978, I would appeareciate hearing from you as to when we can arrange a meeting between the appropriate parties to further discuss this case with the hopes of reaching an amicable resolution of the matter.

Of course, in the interim, unless I am ruled otherwise, I will postpone filing a Complaint, in the interest of determining whether a resolution can be reached.

Thanking you for your anticipated cooperation in this regard, I remain,

Very truly yours,

ZITO, MARTINO and KARASEK

RJK:kao

Ronold J. Karasek, Esquire

EXHIBIT "C"

App. 51.

convenient with not only me and my client's schedule, but also with your schedule and that of your employer and, of course, the arbitrator.

Thanking you for your cooperation in this regard, I remain,

Very truly yours,

ZITO, MARTINO and KARASEK

Ronold J. Karasek, Esquire

RJK:kao

App. 52.

CORRESPONDENCE FROM ZITO, MARTINO and KARASEK

September 12, 1978

Mr. Antony Mollinaro
Teamsters, Chauffeurs, Warehousemen
and Helpers
1345 Hamilton Street
Allentown, Pennsylvania

Re: Anthony Ruggiero, Jr. v. Silver Line, et al.

Dear Mr. Mollinaro:

This will confirm our telephone conversation of Thursday, September 7, 1978, wherein you stated that the union and the employer would be willing to schedule an arbitration hearing to be held in regards to this matter, so that a determination can be made as to the grievance filed by Mr. Ruggiero. You stated to me that the hearing could be scheduled as soon as either Wednesday, September 13, 1978, or Thursday, September 14, 1978. However, I have discussed the matter with my client and, to be quite frank, neither my client nor this office would be able to sufficiently prepare for a hearing at such early dates.

Accordingly, I would appreciate hearing from you as to several tentative dates during the month of October, 1978, which, perhaps, would be more

EXHIBIT "D"

App. 53.

CORRESPONDENCE FROM ZITO, MARTINO AND KARASEK

October 13, 1978

Mr. Anthony Mollinaro
Teamsters, Chauffeurs, Warehousemen
and Helpers
1345 Hamilton Street
Allentown, Pennsylvania

Re: Anthony Ruggiero, Jr., v. Silver Line, et al.

Dear Mr. Mollinaro:

This letter is a sequel to my letter to you .
dated September 12, 1978, in the above matter. I
would appreciate hearing from you as to some
tentative dates wherein we can schedule the
arbitration hearing in this regard.

Thank you for your cooperation in this matter.

Very truly yours,

ZITO, MARTINO and KARASEK

Ronold J. Karasek, Esquire

RJK/kao

EXHIBIT "E"

App. 54.

CORRESPONDENCE FROM ZITO, MARTINO AND KARASEK

November 10, 1978

Mr. Anthony Mollinaro
Teamsters, Chauffeurs, Warehousemen
and Helpers
1345 Hamilton Street
Allentown, Pennsylvania

Re: Anthony Ruggiero, Jr., v. Silver Line, et al.

Dear Mr. Mollinaro:

I would appreciate hearing from you in regard to my letter to you of September 12, 1978, so that in the event an arbitration is scheduled, I may be able to confirm same with my client and with my schedule. If we are not going to proceed to an arbitration, then please advise so that I may proceed with the equity action which has been filed with the Court of Common Pleas of Northampton County.

Thanking you for your cooperation in this regard, I remain,

Very truly yours,

ZITO, MARTINO and KARASEK

Ronold J. Karasek, Esquire

RJK:kao

EXHIBIT "F"

App. 55.

CORRESPONDENCE FROM ZITO, MARTINO and KARASEK

December 4, 1978

Mr. Donald S. Blake, Commissioner
Federal Mediation and Conciliation Service
1503 Cedar Crest Boulevard
Suite 123
Allentown, Pennsylvania 18104

Re: Anthony Ruggiero, Jr., v. Teamsters,
Chauffeurs, Warehousemen and Helpers of
America and Silver Line, Inc.

Dear Commissioner Blake:

This letter is a sequel to our meeting at your office in the above matter, wherein the arbitration hearing in this case was rescheduled to Tuesday, December 19, 1978, at 1:00 p.m. In the interim, I would appreciate hearing from you as to the extent of your subpoena power for arbitrations such as these, and I would appreciate if you could also send to me approximately five (5) subpoenas, so that I may issue them to any individuals who may be recalcitrant to testify in this regard.

Thanking you for your cooperation in this matter, I remain,

Very truly yours,
Ronold J. Karasek, Esquire

EXHIBIT "G"

APPENDIX "G"

App. 56.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY RUGGIERO, JR., : Civil Action No.

Plaintiff : 80-1932

vs. :

TEAMSTERS, ET AL., :

Defendants:

DEPOSITION OF GILBERT OVERPECK taken on
Monday, July 6, 1981, commencing at 1:30 p.m. in
Room 112 of the Northampton County Government
Center, Easton, Pennsylvania.

A P P E A R A N C E S :

RONOLD J. KARASEK, ESQUIRE
For the Plaintiff

QUINTES D. TAGLIOLI, ESQUIRE
For Defendant Union

DANIEL E. COHEN, ESQUIRE
For Defendant Silver Line

Q And did you collect unemployment compensation?

A: Yes, I have, yes.

Q Now, did there come a time, Mr. Overpeck, when, if at all, you were rehired by Silver Line?

A Yes, about a year and a half later, year and

six months, maybe seven months; I can't recall to the date, you know.

Q What happened? How did that come about?

A I was home. They called me up and they asked me if I wanted to take the New York run, run a couple of loads in to New York. Well, I wasn't working at the time. So I run them.

Q Did you continue to work there.

A I worked. I don't know. I would say I worked four to six weeks, in that area.

Q Was that steady work during that time?

A Yes. I was working like four to five days a week, Yes.

Q. And after that four-six week period, you no longer worked there. Is that correct?

A No. I didn't want nothing to --

Q. How did that termination come about?

A I just didn't -- well, I had lost all my seniority and everything. I just looked for another job and that was all.

Q So you quit then at this point in time?

A Yes. I had quit, yes.

App. 58.

Q Now, Mr. Overpeck, how long had you been working at Silver Line in the sense of in terms or years?

A Well, I had worked back in '64 for them; then from '70 to '73, I would say.

Q O.K. And just so we're clear, when you worked in '64, how long was that period until you stopped working for them?

A That was a little over a year.

Q Then the next time was when?

A Back '70 to about '73, it was -- I was there around three years then.

Q Then how long was the next time you worked for them?

A About a year. Well, it was back in '70. O, boy. Late part of '75, '76, it was.

Q Until the time that you were laid off or whatever --

A Yes.

Q -- in mid December of '76.

A Yes.

Q Were you acquainted with Mr. Anthony Ruggiero, who was --

A Yes.

Q --an employee there?

A Yes.

Q Based upon your understanding of how long you were there, was Mr. Ruggiero there longer--

A Yeah.

Q -- or less than you?

A Yeah. He was an older man than I was. I was the younger man in seniority.

MR. COHEN: I object to the answer as not being responsive.

BY MR. KARASEK:

Q Let me ask you this so it's clear here. Was he there for a longer period of time than you were?

MR. COHEN: If you know.

BY MR. KARASEK:

Q If you know.

A He was there quite a while. I can't say how many years, you know, but I know he was there longer than I was.

Q Now, in regard to Mr. Ruggiero's job

App. 60.

classification, was it the same as yours?

A Yeah. He had a Bangor run, bid run, yes.

Q That's what I'm getting to. From your knowledge, do you know what run he had?

A The Bangor run, Slate Belt Area, whatever you want to call it. They call it the Bangor run, Bangor-Roseto.

Q Was that also a bid run?

A Yes, yes, as far as -- to my knowledge, it was, but most of them were bid runs at that time.

Q And do you know how long he had been running that run?

A Ever since I can remember.

Q Was that -- when you say ever since you can remember --

A When I started there.

Q Would that be when you started in '64 or the '70's?

A Back in the '70's, I would say, '72, '73, he had the run - the Bangor run.

Q Now, after you were told to go home that evening -- I guess you don't really know what

App. 61.

transpired or what happened between Mr. Ruggiero and his superiors -- I take it.

A No. I was not there. I couldn't say what happened or -- I would be lying if I did say. I don't know.

Q But you were then when they had a follow-up meeting the next day.

A Yes.

Q Or whenever that was. Is that --

A Yes, sir.

Q And Mr. Ruggiero was also present at that time?

A Yes.

MR. KARASEK: Off the record.

(There is a discussion off the record.)

MR. KARASEK: Back on the record again.

Q Am I correct in my understanding, Mr. Overpeck, that ...

APPENDIX "H"

App. 62.

18. Daily reporting at time shift would start.

19. Once or twice for shortages. I can't remember when.

20. I gave too many goods at a plant and when the mistake was discovered obviously someone else's goods would be short by the surplusage mistakenly delivered elsewhere. Further, if I would go back to the plant where the surplusage was delivered, they would deny it, so I was stuck with the shortage.

21. Reprimand slip.

22. I believe it was Kenneth Yetter.

23. None.

24. (a) I was a senior man at the terminal. I had a bid run for years of the Bangor-Slate Belt Area. My discharge or lay-off was the result of my refusal to take the Allentown run was contrary to the terms of the contract and contrary to my bid.

(b) The Allentown run with stops

undetermined.

(c) (1) This was not my run and contrary to my bid.

(2) I did not know the delivery route(s) or stops.

(3) Since I was senior, the junior men should have been required to take the run as was required and was customary practice.

(d) (1) Kenneth Huber: "If you don't want to make deliveries, go home."

(2) Then I called Anthony Molinaro and he ...

(e) I called both the employer and especially the union to move the matter along. I did this until November of 1977 when I contacted a lawyer and he also sent a letter requesting this.

(f) Article XII of the Collective Bargaining Agreement outlines the steps of the grievance procedure.

(g) The contract states employees with higher seniority are called back first after lay-off. Accordingly, if job slots open up the

App. 64.

laid-off employees are to be re-hired first, in order of seniority, and then new people can be hired.

(h) I cannot remember with whom I spoke, only that there was no work available.

(i) Correspondence and telephone conversations between my Attorney and Mr. Molinaro.

26. (a) Grievance procedures as outlined in the collective bargaining agreement and personal meetings.

(b) (1) No written memorandum of initial meetings as required by the contract.

(2) Numerous unanswered and unreturned calls and inquiries to both employer and union representatives for almost a year.

(3) Scheduling of an arbitration hearing and then stating it was only "mediation".

(4) Scheduling an arbitration and refusing to proceed since a stenographer was present.

(5) Needing an attorney to represent me, the union is supposed to be representative pursuant to the contract.

(c) (1) They have denied even things

App. 55.

that were agreed to with my attorney.

(2) Prior to the time of the hearing (arbitration or mediation) Commissioner Blake was already told about my case by the union representatives and was biased to the employer and union position so that a full fair hearing would have been impossible.

(3) Treated other employees in the same position differently than I was treated.

(d) It was almost three (3) years from my termination before I proceeded with the instant lawsuit by filing a full Complaint. The three (3) years was more than sufficient time for the matter to be resolved by internal remedies. Further, the lawsuit was necessary to protect my legal rights and position.

(e) More time would pass, memories would fade, witnesses would be unavailable (in fact, as noted, some potential witnesses have died), loss of union benefits and pension rights and much anxiety and emotional and physical effects.

27. (a) Already answered.